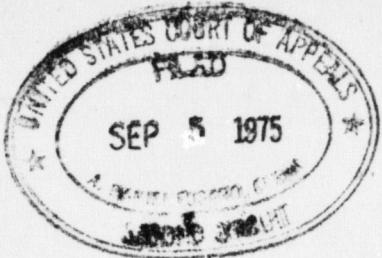


*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF**



75-7326

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STANLEY V. TUCKER,
Plaintiff-Appellant

-v-

No 75-7326

THOMAS E. MESKILL, et al

Defendant-Appellees

APPELLANT'S BRIEF

Appeal from Final Judgment Entered on
Motions To Dismiss on July 23, 1975

HONORABLE T. EMMET CLARKE
TRIAL JUDGE

STANLEY V. TUCKER
APPELLANT/PLAINTIFF
Box 35
Hartford, Conn 06101

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ISSUES PRESENTED FOR REVIEW

1. Is the Governor of Connecticut (and associated state officers) endowed with greater privilege and immunity than the Governor of Ohio in light of the decision of U. S. SUPREME COURT in the Kent State student murders?
2. Is the Governor of Connecticut (and associated state officers) endowed with greater privilege and immunity than the President of the United States in light of the decision of the U. S. Supreme Court in the Richard Nixon Watergate proceedings?
3. Do the allegations of the complaint meet the test of General Statute 4-165 for personal liability of Connecticut state officers?
4. Did the Trial Judge erroniously usurp the function of a mandatory Three-Judge District Court in light of the recent 2nd C. A. decision in Maggott v Norton, June 30th, 1975?
5. Is Conn G. S. 49-44 unconstitutional and void in light of standards for notice and hearing set forth by U. S. Supreme Court for presenting defenses to out-of-state judgments in Griffin v Griffin infra.
6. Are the liens and judgments complained of prohibited as "phoney" by Connecticut's newly enacted P.A. 73-498, "Uniform Enforcement of Foreign Judgments Act"

STATEMENT OF THE CASE

A. Nature of Case - California Defendants, Robert R. Anderson, Jean Neal, Paul B. Crikelair, and Margie J. Threlkeld caused to be recorded starting about 1972 and ending about 1974 upon about 15 pieces of property owned by Plaintiff in Connecticut liens resulting from California state court litigations. These liens flowed from domestic litigation wherein about 40 cases both criminal and civil were brought against plaintiff in the state courts of California during the period of about 1959 through about 1970. All except two or three ended in dismissals. The ones that went to judgment plaintiff claims are not entitled to full faith and credit but are "phoney" being made without jurisdiction under conditions of denial of due process.

The California state judgments were never litigated in Connecticut courts but instead in the federal courts of San Francisco and/ or Los Angeles under California's newly enacted "long arm" statute wherein plaintiff claims there was no "activity" on which to base jurisdiction. Without notice or hearing these California federal judgments were "registered" in Connecticut federal courts under Title 28 USC 1963 and again without notice or hearing the liens were recorded in Connecticut town halls under Connecticut G. S. 49-44.

B. Nature of Case- Connecticut Defendants - On or about October 30th, 1974 this Plaintiff filed his complaint in the USDC- Conn requesting a Three-Judge District Court to hear a complaint that G. S. 49-44 permitting the liens without notice or hearing violated the due process clause

of the United States Constitution as developed in opinions by the UNITED STATES SUPREME COURT.

The State Officer Defendants included the Governor of Connecticut, the respective state legislative committee chairmen and the Chief Judicial Administrative Officer. The theory of liability was the same under which the Ohio plaintiffs sued the Governor of Ohio and Head of the Ohio National Guard for deaths of their children by gun-fire from Ohio National Guard troops stationed at Kent State University in 1968 see Scheuer v Rhodes 1974 42 LW 4543.

Nevertheless the District Court rules that legislative immunity (?) protected the state defendants and that the notice and hearing granted in the California courts met the Constitutional requirements in Connecticut. On both issues Plaintiff contends the District Court to be clearly wrong in light of recent decisions of the UNITED STATES SUPREME COURT, Griffin v Griffin 327 US 220 Feb 25, 1946, Snaidach v Family Finance 395 US 337, Lynch v Household Finance 405 US 538, Tucker v Maher, 405 US 1052, and most recently Fuentes v Shevlin 407 US 67.

C. Impact of Newly Enacted P.A. 73-498 ("Phoney Judgement Act")
Uniform Enforcement of Foreign Judgments Act.

Unnoticed by the District Court and by this Plaintiff at about the same time this complaint herein was filed the Conn. legislature adopted PA 73-498 to prohibit "phoney judgments" such as those complained of herein by this Plaintiff. This new act adopted October 1, 1973 was not briefed by any of the attorneys for the State Officer Defendants in the Trial Court. However, PA 73-498 appears on its face to supply the essential

"notice" and "hearing" plaintiff contends is required by the federal constitution and federal decisions of the UNITED STATES SUPREME COURT before a foreign judgment can become in effect a judgment of the state of Conn. with new rights and duties and liabilities as set forth in the Connecticut General Statutes.

One solution to this appeal is for this Honorable Court to construe PA 73-498 as applicable to the G.S 49-44 liens thus invalidating the liens for lack of the constitutional notice and hearing.

ARGUMENT

I. IT HAD BEEN LONG RECOGNIZED THAT BRIEF AND SKIMPY LANGUAGE OF 28 USC 1963 CREATED DOUBT AND AMBIGUITY AS TO HOW A DEBTOR WAS TO RAISE CONSTITUTIONALLY PROTECTED DEFENSES TO A "PHONEY" OR INVALID JUDGMENT ONCE REGISTERED.

In 1948 the 80th Congress adopted Title 28 USC 1983 to facilitate collection between the states of final judgments that were "valid" and not "phoney" and thus entitled to full faith and credit. The proceedings this litigant/appellant has been subject to in the federal courts of Connecticut wherein this litigant/appellant contends his properties have all been subject to grossly excessive "phoney" judgment liens in violations of the General Statutes of Connecticut and in violation of the Constitution of the United States as interpreted by the UNITED STATES SUPREME COURT leave the unmistakable conclusion that much clarification and/or amendment is needed in application of 28 USC 1963 and/or of state statutes.

Proposals based on the English system of registration of foreign judgments within this Country date back to 1927 when the American Bar Association proposed a system of registration both state court and federal court that was ignored by Congress. A decade later the Supreme Court considered proposed Rule 77 for registration but apparently dissatisfied with its lack of details did not submit this proposed rule to Congress. The deficiencies and limitations inherent in 28 USC 1963 have been long recognized and well expressed in law reviews such as the COLUMBIA LAW REVIEW Vol L 1950 page 973:

"Reform was clearly necessary when Congress (adopted 28 USC 1963).....

..."although there was an undeniable need for some change, it would appear that this statute is somewhat less than ideal. Primarily, it is too brief. Unfortunately

The same law review article goes on to describe the circumstances under which judgments are rendered that need a device to prevent or void registrations or must necessarily require a separate action to present the necessary defenses.

COLUMBIA LAW REVIEW Vol V 1950 Page 976:

"It is of course, possible that the statutory purpose is not to remove the availability of these defenses, and that the words...." a judgment so registered shall have the same effect as a judgment of the district court of the district where registered".... are to be interpreted as preserving them. Since the section neither expressly provides for such defenses nor authorizes the promulgation of court rules for the purpose, the inference, under such interpretation, is that they are to be raised by separate action to enjoin execution. While such a procedure would appear to satisfy due process, it is doubtful whether it is an adequate substitute for preventing registration."

II. THE DISTRICT COURTS AND CIRCUIT COURTS OF APPEAL ARE UNIFORMLY CONSISTENT THAT RECORDING A FOREIGN JUDGMENT UNDER 28 USC 1963 CREATES A BRAND NEW JUDGMENT IN THE FORUM STATE WITH NEW RIGHTS AND LIMITATIONS.

It has long been settled law within the United States that a foreign judgment is barred by a statute of limitations of the forum state.

Meek v Meek 45 Iowa 294 (1876) "The United States Supreme Court has decided the question raised by the plaintiff, holding that the provisions constitutional and statutory relied upon by the plaintiff, do not prevent the several states from enacting statutes of limitations barring actions upon judgments rendered in other states"

The Iowa court relied upon M'Elmoyle v Cohen 38 US 312 (1839) which states:

"It being long settled that the statute of limitations may bar recoveries upon foreign judgments"

For more recent cases see :

Juneau Spruce Corp v International Longshoreman's Union
D Hawaii 1955 128 F Supp 697

Matanuska Valley Lines Inv v Molitor (CA9th 1966)
365 F 2d 358 cert denied (1967) 386 US 914

In Matanuska supra judgment obtained in the USDC of Alaska where judgment is a lien for 10 years cannot be enforced in Washington in the 9th year because Washington Statute of Limitations provides that no foreign judgment may be registered or enforced in Washington after 6 years from the time judgment was entered."

See also Stanford v Utley 341 F 2d 423
Gullet v Gullet 188 F 2d 719

III. CIRCUIT COURTS OF APPEAL HOLD CONSISTENTLY THAT ANY ATTEMPT TO USE STATE STATUTES FOR COLLECTION OF A FEDERAL JUDGMENT SUBJECTS THE CREDITOR TO ALL OF THE LIMITATIONS IN THE STATE STATUTES INCLUDING TIME AND LIMITATION OF DEBTOR DEFENSES.

The thrust of Appellant's complaint in the district court was to the effect that Conn G. S. 49-44 permitting the levying of liens on out of state judgments without notice or hearing violated his constitutional rights to due process and notice and hearing as to defenses to the "phoney" California judgments as the registration of the "phoney" judgments (and the use of state statutes to record liens) created new judgment as to the forum state and any attempt to apply state law subjected the new judgment to all of the limitations set forth in the General Statutes of Connecticut. This fundamental principle was totally ignored in the opinion by the district court and is supported consistently by all the district courts and courts of appeal that have faced this question.

A decision upheld by the UNITED STATES SUPREME COURT highlights the principles applicable to this appeal.

In Ohio Hoist Mfg Co v LiRocchi (CA 6th 1974) 490 F 2d 105 Cert Pet dism'd 94 S Ct 2654, 41 L ed 2d 661, it was held that there was a federal question jurisdiction of an action alleging that a California judgment was registered in an Ohio district court where the judgment creditor did not reveal that execution upon the California judgment had been stayed pending a motion for a new trial.

Said the Ohio Hoist Mfg Co supra Court:

In *Ohio Hoist Manufacturing Co. v. LiRocchi* (CA6th, 1974) 490 F2d 105, cert pet dism'd (1974) US , 94 S Ct 2654, 1 L ed2d 51, it was held that there was federal question jurisdiction of an action alleging that a California judgment was registered in an Ohio district court where the judgment creditor did not reveal that execution upon the California judgment had been stayed pending a motion for a new trial. Said the court:

"While we decline to reach the question of whether a violation of § 1963 gives rise to a civil remedy for damages, it seems clear that the registering court has authority, necessarily implied from §1963 and as a matter of inherent jurisdiction, where a foreign judgment has been registered in knowing violation of the terms of the registration statute, to grant relief (a) by annulling or vacating the registered judgment (as the court below has actually done); (b) by vacating all process or executive which may have issued upon the registered judgment; and (c) by restoring to the aggrieved parties any assets or properties which may have been seized or levied upon. These appear to be the minimum steps which a District Court could take to remedy a fraud which had been practiced upon it, and also to remedy a violation of the registration statute itself. Moreover, since it necessarily has implied federal authority to accomplish these results, the registering court also would have pendent jurisdiction of a non-federal claim for abuse of process where the aggrieved party has suffered damage or loss as a result of the wrongful registration."

In Hanes Supply Co v Valley Evaporation Co 261 F 2d 29
1958 5th C. A. jurisdictional defenses as to the validity
of the foreign "default" judgment were dismissed in the
District Court but the 5th C. A. reversed:

Page 29: The United States Court of Appeals,
Tuttle, Circuit Judge, held that defendant was entitled to show, when suit was brought on the judgment in the district of its residence, that no agreement to arbitrate had been made by it, or if so, none to arbitrate at the place where the arbitration was held, and that such judgment based on the purported arbitration was void for want of proper venue, and that the existence of a written provision in the contract to settle by arbitration was a fact question.

In Arenas v Sternecker 109 F Supp 1 1953 the Kansas District Court held proceedings to enforce a foreign judgment "registered" in Kansas void for failure to follow the state statutory requirements.

Page 2: "The judgment debtor assails the referee's report because it is said the debtor's answers were not "reduced to writing" as required by the statute, G. S. Kan 1949 60-3403, the creditor concedes the answers were not reduced to writing; so it is manifest the statutory procedure was not strictly followed. The court cannot therefore approve the report."

In Metanuska, supra, the local statute of limitations prohibited enforcement of an Alaska judgment (valid in Alaska) in Washington due to statute of limitations of the forum state.

In US v Yazell (1966) 382 US 341 the law of Texas regarding married women's contracts was applied to limit method of collection or balance due on disaster loan.

In RFC v Breeding (CA 10th 1954) an Oklahoma statute that prevented general execution without ent of deficiency barred RFC from proceeding.

In First Na'l Bank of Boston v Santisteban 181 F Supp 366 failure to comply with Puerto Rican statutes precluded execution.

In US v Fairbank Realty Corp (ED NY 1943) 50 F Supp 373 federal court would not extend a supplementary receivership for enforcement of a state court judgment.

Other pertinent cases:

Miller v US (CA 9th 1947) 160 F 2d 608
G E v Hurd (CCD Oregon 1909) 171 F 984
Spurway v Dyer (SD Florida 1042) 48 F Supp 255

**IV. APPLICATION OF CONN G.S. 49-44 PERMITTING RECORDING
OF LIENS WITHOUT NOTICE OR HEARING VIOLATED APPELLANT'S
RIGHTS TO PRESENT DEFENSES UNDER RULE IN GRIFFIN v GRIFFIN
327 US 220 Feb 25th, 1946**

The Griffin, supra, case involved the validity and applicability of full faith and credit on a NY state judgment for alimony where execution was commenced in the District of Columbia. The District Court upheld the lien (just as Judge Clarie did herein). The Court of Appeal upheld the district court (this court of appeals is requested to reverse). The UNITED STATES SUPREME COURT reversed and remanded holding due process was offended where Mr Griffin had his assets seized or executed on by reason of an out of state judgment when he contended he had a valid defenses including that the out of state judgment was invalid due to denial of due process.

Griffin P 228:

Because of the omission, and to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him under the law of New York against the docketing of judgment for accrued alimony, there was a want of judicial due process, and hence want of that jurisdiction over the person of petitioner prerequisite to the rendition of a judgment *in personam* against him. *McDonald v. Mabee*, 243 U. S. 90; cf. *Webster v. Reid*, 11 How. 437, 459. The only indication in the record as to petitioner's residence at the time of the entry of the 1938 judgment is a recitation in the judgment itself that he was then a resident of the District of Columbia. But it is immaterial for present purposes whether or not petitioner was a domiciled resident of New York at the time, either within or temporarily without the State, or a resident of some other jurisdiction. It is plain in any case that a judgment *in personam* directing execution to issue against petitioner, and thus purporting to cut off all available defenses, could not be rendered on any theory of the State's power over him, without some form of notice by personal or substituted service. *Wuchter v. Pizzutti*, 276 U. S. 13, 18-20; Restatement of Conflict of Laws, § 75; and compare *Milliken v. Meyer*, 311 U. S. 457. Such notice cannot be dispensed with even in the case of judgments *in rem* with respect to property within the jurisdiction of the court rendering the judgment. *Roller v. Holly*, 176 U. S. 398, 409.

A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. *National Exchange Bank v. Wiley*, 195 U. S. 257; *Old Wayne Life Assn. v. Mc-*

In a more recent case the 5th C.A. (1958) used the Griffin, supra, opinion quoted as authority for setting aside in equity Texas state court judgments rendered under conditions of fraud as to jurisdiction just as herein this Appellant contends fraud as to jurisdictional basis for the California judgments registered in Connecticut and also denial of due process (rule of Griffin supra) as to the proceedings in the California courts. In equity this Appellant is entitled to a hearing on his defenses just as the Griffin, supra, and O'Boyle infra, plaintiffs.

O'Boyle v Bevil 250 F 2d 506 (1958)

Page 506: "Under Texas law intentional, misleading actions that result in withholding of an issue from court, which but for such actions, other party would present to court, may be basis of suit to set aside judgment for fraud."

Page 516 cites Griffin supra with authority:

"A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction"

V. SUBSTANTIAL QUESTIONS OF CONSTITUTIONAL CONFLICT WITH G. S. 49-44 MANDATE REVERSAL FOR THREE-JUDGE COURT

In Goosby v Osser, 409 US 512, 518 (1973) and more recently in Hagans v Lavine, 415 US 528, 537-39, the U. S. Supreme Court reiterated that "claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous." In this action as briefed above Points I, II, III, and IV of argument show without a doubt that substantial constitutional issues were raised by the complaint in the district court.

The district court's position as set forth on page 6
of the Ruling on Defendant's Motion To Dismiss:

"The Court finds that the constitutional grounds raised by the Plaintiff are wholly insubstantial and frivolous"

The district court erroneously assumed that Appellant relied on Sniadach v Family Finance Corp, 395 US 337 (1969) and Fuentes v Shevin, 407 US 67 (1972) and totally ignored cases briefed and principles of law set forth herein above in argument Points I, II, III and IV. The district court went on to further rely on its own cases, some of which were settled while appeal was pending, Tucker v Teitenberg USDC-Conn H 74-16, and another Tucker v Neal, USDC H-8 which a Petition for Certiorari has been filed and awaits the October 1, 1975 session of the UNITED STATES SUPRME COURT for further proceedings.

In any event cases formerly litigated in the same distiict court did not challenge the constitutionality of G. S. 49-44 and are of no relevance.

A recent action in which these same principles were stressed involved a decision in the 2nd C.A. on June 30, 1975 wherein the same District Judge Clarie was reversed under cimilar circumstances for usurping the authority and power of a three-judge court to hear and deceide constitutional challenges to state statutes and/ or administrative proceedings.

2nd C. A. No 74-2670 Maggett v Norton

Page 4552 "Constitutional claims have been dismissed by single judges under this standard only in very limited circumstances"

See Rubino v Nusbaum F 2d (2 Cir 1974)
Agur v Wilson 498 F 2d 961 (2 Cir 1974)
Gates v Collier 501 F 2d 1298 (4th Cir 1974)

"Reversed and remanded for convening of 3 judge court"

VI. NONE OF THE STATE OFFICIALS ARE IMMUNE UNDER THE FACTS OF THIS ACTION AND PRINCIPLES OF KENT STATE MURDERS SCHEUER V RHODES, 416 US 232 (1974) and US v NIXON, 94 S Ct 3090 (1974)

The district court most generously grants all of the state officer defendants legislative immunity notwithstanding two of them (Governor Meksill and Justice Cotter) are not legislators. This decision of course was outside the courts jurisdiction based on argument supra that a substantial question of constitutional challenge to a state statute exists mandating all proceedings to be heard by a three-judge district court. While reserving the major argument and thrust of inapplicability of "immunity" to facts of this case to hearing before three-judge district court nevertheless this Appellant treats the high-lights of this defense in this Point V.

The principles propounded by the U.S. SUPREME COURT in US v NIXON, supra, eliminate all doubt but that immunity is not applicable to the facts of this action. In simplest terms the Nixon, supra, decision held that the due process rights of American Citizens were greater than the immunity claims of the President in light of the absence of a showing the national security was at stake.

U. S. v Nixon at P 3090 rejects the "executive privilege":

"that President's generalized interest in confidentiality unsupported by claim of need to protect military, diplomatic, or sensitive national security secrets, could not prevail against special prosecutor's demonstrated specific need for the tape recordings."

This "special privilege" or "immunity" was again rejected on P 3096:

→ 4. Neither the doctrine of separation of powers nor the generalized need for confidentiality of high-level communications, without more, can sustain an absolute unqualified presidential privilege of immunity from judicial process under all circumstances. See, e. g., *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60; *Baker v. Carr*, 369 U.S. 186, 211, 82 S.Ct. 691, 706, 7 L.Ed.2d 663. Absent a claim of need to protect military, diplomatic, or sensitive national security secrets, the confidentiality of presidential communications is not significantly diminished by producing material for a criminal trial under the protected conditions of *in camera* inspection, and any absolute executive privilege under Art. II of the Constitution would plainly conflict with the function of the courts under the Constitution. Pp. 3105-3107.

U. S. v Nixon rejects the second defense of a "political" or "non-justiciable" question. This same defense by the state legislators must be rejected on identical grounds.

at P 3098:

at P 3100:

The District Court rejected jurisdictional challenges based on a contention that the dispute was nonjusticiable because it was between the Special Prosecutor and the Chief Executive and hence "intra-executive" in character; it also rejected the contention that the judiciary was without authority to review an assertion of executive privilege by the President. The court's rejection of the first challenge was based on the authority and powers vested in the Special Prosecutor by the regulation promulgated by the Attorney General; the court concluded that a justiciable controversy was presented. The second challenge was held to be foreclosed by the decision in *Nixon v. Sirica*, 159 U.S.App.D.C. 58, 487 F.2d 700 (1973).

[8,9] The mere assertion of a claim of an "intra-branch dispute," without more, has never operated to defeat federal jurisdiction; justiciability does not depend on such a surface inquiry. In *United States v. ICC*, 337 U.S. 426, 69 S.Ct. 1410, 93 L.Ed. 1451 (1949), the Court observed, "courts must look behind names that symbolize the parties to determine whether a justiciable case or controversy is presented." *Id.*, at 430, 69 S.Ct., at 1413. See also: *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969); *ICC v. Jersey City*, 322 U.S. 503, 64 S.Ct. 1129, 88 L.Ed. 1420 (1944); *United States ex rel. Chapman v. FPC*, 345 U.S. 153, 73 S.Ct. 609, 97 L.Ed. 918 (1953); *Secretary of Agriculture v. United States*, 347 U.S. 545, 74 S.Ct. 826, 98 L.Ed. 1015 (1954); *FMB v. Isbrandsten Co.*, 356 U.S. 481, 482 n. 2, 78 S.Ct. 851, 853, 2 L.Ed.2d 926 (1958); *United States v. Marine Bancorporation Corp.*, — U.S. —, 94 S.Ct. 2856, 40 L.Ed.2d — (1974), and *United States v. Connecticut National Bank*, — U.S. —, 94 S.Ct. 2788, 40 L.Ed.2d — (1974).

RECENT DECISION IN THE KENT STATE STUDENT KILLINGS
AFFIRMS THAT THIS CASE SHOULD GO TO TRIAL ON THE MERITS

Scheuer v Rhodes 42 IW 4543 April 1974

Prior to Scheuer, supra, decisions as to damages in federal civil rights cases were in conflict between the circuits. Some circuits, such as the 1st and 5th C.A.s, routinely awarded damages under a valid claim under Title 42 USC 1983.

See: Whirl v Kern 407 F 2d 781 (1969)

P 782: "Ignorance by sheriff who detained in jail almost nine months after dismissal of indictments..... was no defense to an action for deprivation of civil rights....."

Other circuits, like the 2nd C. A., imposed a "good faith" defense. An example involved this litigant in another action in Tucker v Maher, 497 F 2d 1309, May 7, 1974,
Certiorari Denied 43 U. S. L. W. 3276, November 12, 1974.

P 1315 : "Constitutional law, particularly in this difficult and confusing area of state action and due process, is hardly predictable with any degree of certainty."

The Scheuer, supra, decision established firmly that as to the federal civil rights statutes, 42 USC 1983, state officers have only a limited immunity when acting strictly within the scope of their duties and further that injuries falling within the allegations of "intentionally, recklessly, willfully and wantonly" justified reversing the lower court dismissals and remanding the action for trial on the merits. See P 4544 and 4549.

"We intimate no evaluation whatever as to the merits.. we hold only on the allegations of the complaints they were entitled to have them judicially resolved."

The allegations used in the complaint in this action meet the test established by Schuerer, supra, and this case also should "go to trial on the merits."

See Scheuer P 4544 and 4549:

"We intimate no evaluation whatever as to the merits.... we only hold on the allegations of the complaints they were entitled to have judicailly resolved."

The allegations used in the complaint in this action meet the test established by Schuerer, supra, and this case should also "go to trial on the merits."

Subsequent to filing of briefs in district court but prior to oral argument two significant state actions were decided to the effect of prohibiting immunity under the facts of this action. See G. S. 4-165 that holds Conn state officials personally liable for acts "wanton and wilful"

Hartford Superior Court No 185283 Horton v Meskill (1974)

Horton, supra, upheld a complaint against the same state officer, Governor Thomas E. Meskill, challenging the use of property tax (constitutional challenge) to fund schools. The analogy herein is that in the district court this Appellant sued the same state officer on grounds that the judgment lien statute violated constitutional rights. Can there be a difference between Plaintiff Horton's rights to equal protection of the laws in applying property tax to funding schools and Plaintiff Tucker's rights to due process in presenting defenses to "phoney" out of state judgments?

See how Judge in Superior Court rejects the "immunity" defense in Memorandum of Opinion Dec 26, 1974 page 14:

"First it has been held elsewhere that the doctrine of "sovereign immunity" was not meant to apply to actions which seek, as the plaintiff here seeks, nothing more than a declaration of legal rights"

Textron v Wood, 36 Conn L. J., No 23 Dec 3, 1974, 1, 4

"Second, where an action for a declaratory judgment concerns a matter of considerable public importance as does this case the statute and rules should be accorded a liberal construction to carry out the highly remedial purposes underlying declaratory judgments."

Larke v Morrissey 155 Conn 163, 169

Sigal v Wise 114 Conn 297, 301

Thus the application to this action is in light of a great public need and importance of the constitutionality of the statutory scheme G. S. 49-44 for recording of foreign judgments and need for public protection against "phoney" judgments the immunity does not apply.

In another Hartford Superior Court action No 189957, Kagan v King, a damage suit was upheld against a legislator seeking changes in the legislative controls over ambulances who allegedly make libelous statements to the press. The damages claim was upheld Page 5 of opinion Dec 28th, 1974:

"The conduct complained of in this case includes a period before any legislation regarding ambulance service was pending..... Under such circumstances the court holds that the immunity clause does not preclude the suit in question."

This later action, Kagan supra, disposes of any defense to the damages claim and disposes of all "immunity" defenses since "no legislative" action clearly had been pending and the gross neglect of the state officials wantonly and willfully, fell within the liability standards of the state and federal cases cited above. These cases totally ignored by district court.

VII. CONNECTICUT'S NEWLY ADOPTED, UNIFORM RECOGNITION OF FOREIGN JUDGMENTS ACT, PROHIBITS THE LIENS AS "PHONEY" AND MAY BE THE LEGISLATIVE ANSWER TO THE PLAINTIFF'S COMPLAINT

Unbriefed by any of the defense attorneys and unnoticed by the District Court and the Plaintiff/Appellant effective October 1, 1973 Connecticut adopted the "Uniform Enforcement of Foreign Judgments Act, G. S. 52-604 through 609. This is a model act adopted by many of the states. The complaint in the district court is dated October 30th, 1974 whereas the Ruling on Defendant's Motion to Dismiss is dated April 17th, 1975. The judgment liens complained of were all recorded partly in August 1972, partly in March 1973 and the remainder in August 1974. Thus most of the liens were recorded before the adoption of G.S 52-604 - 609.

Of great significance is that this model act provides the very constitutional protections (lacking in 28 USC 1963) of notice, hearing and opportunity to present defenses. Griffin, supra, requirements are met.

G. S. 52-605: within 30 days after filing of the judgment creditor shall mail notice to the debtor."

In addition there is a right to present defenses.

G. S. 52-606: "If the debtor shows the court any grounds upon which enforcement shall be stayed.... the court shall stay enforcement"

Prior decisions appear to make clear that this statute, part of the Connecticut statutory scheme, affects judgment liens under G.S. 49-44 and precludes use of "federal liens" which in turn are only permissive to the extent they comply with state law and procedure s.

The adoption of the model act, G.S. 52-604-609, appears to make specious the district court's memorandum that holds no constitutional questions involved. Indeed why did the Connecticut Legislature put into law such fundamental constitutional safeguards as notice to debtor, provision for hearing and method of presenting defenses if these very matters complained of herein were not of great constitutional significance to all Connecticut citizens?

The question of when a statute is adopted as to what effect it has on a statute not repealed has been adequately considered by Connecticut courts and resolved to the extent that the new statute superseeds and amends all conflicting parts, if any, in the older statute. In this action the newly adopted model act does not conflict with G. S. 49-44 but merely fills in the voids and deficiencies.

See McAdmans v Barbieri 143 Conn 405 1956:

Page 413: "In adopting the amendment in 1949, the board of aldermen did not expressly repeal these provisions. Were they repealed by implication? When a later statute covers the whole subject to which it relates, it will be held to repeal by implication all prior statutes on the matter.

Hutchison v Hartford 129 Conn 329, 332

State ex re Reily v Chatfield 71 Conn 104, 112

Fair Haven & W R Co v New Haven 75 Conn 442

Hartford v Hartford Theological Seminary 66 Conn 475, 484

This is also true if the later statute is necessarily repugnant to the former.

Landry v Personnel Appeal Board 138 Conn 445

Lake Garda Co v LeWitt 126 Conn 588, 589

Thus a review of this model act by this Honorable 2nd C. A. and a holding that the model acts affects all liens herein and a holding that such liens are void and contrary to law would effectively resolve all issues herein.

CONCLUSION

The trial court was without jurisdiction to make decision rendered under the ruling of Maggott, supra, as a three-judge court is mandatory.

The facts of this action point to that 28 USC 1963 whose debtor deficiencies have been long exposed in bar review articles (Columbia Law Review Vol V 1950 Page 971) is subject to constitutional attack for which a new complaint or amendment is needed to the existing complaint.

However, under the rule in Griffin, supra, without any doubt G. S. 49-44 is unconstitutional. The adoption of the model act, G.S. 52-604-609 can be held by this court to amend G. S. 49-44 and to hold invalid the liens complained

As an alternative this court can reverse and remand for proper proceedings before a three-judge district court as to the applicability of G. S. 52-604 - 609 to all of the liens recorded in 1972, 1973 and 1974.

The immunity allegedly of the state defendants should not be an issue on this appeal if a three judge court is ordered. In any event the principles of state and federal law propounded herein hold that there is no immunity as no Legislative acts took place.

RESPECTFULLY SUBMITTED:

STANLEY V. TUCKER/APPELLANT



CERTIFICATE OF SERVICE BY MAIL

STANLEY V. TUCKER, hereby certify that on the 2nd day of September 1975 I served the within document, Appellant's Brief on the Appellees herein by mailing 2 true copies thereof postage prepaid by depositing in the U. S. mails at Hartford (air mail to California) addressed as follows:

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